

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Anthony B. Burnside, #259648,)	
)	
Plaintiff,)	C.A. No. 6:05-2212-HMH-WMC
)	
vs.)	OPINION & ORDER
)	
John Ozmint, Director; William M. White,)	
Warden; John R. Maxey, Major; Donald)	
Beckwith, Captian; Willie Bing, Lt.; and)	
R. Craig, Correction officer,)	
)	
Defendants)	

This matter is before the court with the Report and Recommendation of United States Magistrate Judge William M. Catoe, made in accordance with 28 U.S.C. § 636(b)(1) (West Supp. 2005) and Local Rule 73.02 DSC.¹ Anthony B. Burnside (“Burnside”), a state prisoner proceeding pro se, alleges various violations to his civil rights under 42 U.S.C. § 1983. In his Report and Recommendation, Magistrate Judge Catoe recommends dismissing Burnside’s complaint with prejudice and without issuance and service of process and deeming the action a strike for purposes of 28 U.S.C. § 1915(e)(2) and (g) because the issues have previously been adjudicated in another case. See Burnside v. Ozmint, No. 03-3799 (D.S.C. Oct. 21, 2004) (granting partial summary judgment to the defendants) & (D.S.C. Mar. 31, 2005) (granting

¹ The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

summary judgment to the defendants and dismissing the case), aff'd No. 05-6641, 2005 WL 1771568 (4th Cir. July 27, 2005) (unpublished).

Burnside filed objections to the Report and Recommendation. Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Report and Recommendation of the Magistrate Judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

Upon review, the court finds that Burnside's objections are non-specific, unrelated to the dispositive portions of the Magistrate Judge's Report and Recommendation, or merely restate his claims.² Therefore, after a thorough review of the Magistrate Judge's Report and the record in this case, the court adopts the Magistrate Judge's Report and Recommendation.

²In his objections, Burnside suggests that there was a basis for disqualification of Magistrate Judge Catoe either in the previous action, civil action number 03-3799, or in the instant action, but Burnside does not substantiate this claim. To the extent Burnside objects to Magistrate Judge Catoe's issuing a Report and Recommendation in both the previous action and the instant action, Burnside's objection is without merit. The final determination in both cases rests with the United States District Court, Judge Harwell in civil action 03-3799 and the undersigned in the instant action. See Mathews, 423 U.S. at 270-71. Ultimately, Burnside failed to raise specific objections to Magistrate Judge Catoe's conclusions that Burnside's claims have been adjudicated in civil action 03-3799 and that the instant action should be deemed a strike.

Therefore, it is

ORDERED that Burnside's complaint is dismissed with prejudice and without issuance and service of process. Further, it is

ORDERED that this dismissal is deemed a strike under 28 U.S.C. § 1915(e)(2) and (g).

IT IS SO ORDERED.

s/ Henry M. Herlong, Jr.
United States District Judge

Greenville, South Carolina
November 1, 2005

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.